

PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

[61 PA. CODE CHS. 7, 31—34, 42, 44—47 AND 58]

Sales and Use Tax

The Department of Revenue (Department), under authority contained in section 270 of the Tax Reform Code of 1971 (TRC) (72 P. S. § 7270), proposes amendments to Chapters 7, 31—34, 42, 44—47 and 58, to read as set forth in Annex A.

Section 270(a) of the TRC specifically provides that the Department is authorized and empowered to prescribe, adopt, promulgate and enforce, rules and regulations consistent with Article II of the TRC (72 P. S. §§ 7201—7282) (Tax for Education) relating to any matter or thing pertaining to the administration and enforcement of Article II and the collection of taxes, penalties and interest imposed by Article II.

Purpose

The Department is proposing these amendments in part, as the result of a comprehensive review of Sales and Use Tax regulations in light of Legislative changes from 1991 to the present.

Explanation of Regulatory Requirements

Section 7.3 (relating to petitions) is proposed to be amended in a number of areas. Subsection (a) removes the requirement that petitions be filed with the Secretary of the Board of Appeals, because this position no longer exists. In addition, the Board's address has been updated for petitions filed by means of the United States Postal Service; for petitions being filed through other delivery services, the regulations will require delivery to specified Board locations.

Finally, § 7.3(a) is proposed to be amended as a result of the act of June 16, 1994 (P. L. 279, No. 48) (72 P. S. § 10006) to provide that petitions are deemed to be timely filed when postmarked by the United States Postal Service or presented to Departmental personnel on or before the petition due date. The burden is on the taxpayer to prove that the petition was timely postmarked by the United States Postal Service or timely presented to the Department. The statutory period within which the Board is required to render a decision on petitions deemed timely filed by reason of being timely postmarked by the United States Postal Service, or timely presented to Department personnel other than personnel at the Board, will begin to run on the date that the petition is actually received by the Board.

Section § 7.6(b) (relating to decision and order) is proposed to be amended to allow a final decision of the Board to be signed by a designee of a member of the Board.

The Department is proposing to add § 31.4(a)(3) (relating to rentals or leases of tangible personal property). Subsection (a) sets forth general guidelines regarding imposition. Taking into consideration the presumption set forth in paragraph (1), the new paragraph (3) clarifies that, if a person leases or rents equipment together with the services of an operator to another person, who is given the right to use or direct the use of the equipment, the transaction is subject to tax. The paragraph goes on to provide examples of transactions subject to tax. Sub-

section (b)(1) clarifies the Department's policy with regard to the taxability of property withdrawn from inventory.

The section title for § 31.5 (relating to persons rendering taxable services) is proposed to be amended to clarify that the section applies to tangible personal property and not the various services that became taxable in 1991. "Extended warranty" was added to the list of designations that an agreement may have when subject to tax. This addition was done to clarify the Department's policy. Section 31.5 was also expanded generally with text and examples to better guide the taxpayer.

Section 31.7(c)(1) (relating to use tax) generally provides that, with respect to property purchased 6 months or more prior to its first taxable use in this Commonwealth, the taxpayer may elect to pay the tax on the fair market value of the property at the time of its first use in this Commonwealth or on its original purchase price. To conform this paragraph to 1991 amendments to section 201(g)(5) of the TRC (72 P. S. § 7201(g)(5)), the Department is proposing to amend the paragraph to provide that the election to use the alternative base shall be made by filing a return within 6 months of the first taxable use. Prior to the 1991 amendments, the deadline had been within 1 year from the date the return for the taxable use was due.

Section 31.26 (relating to financial institutions) currently sets forth the sales tax obligations for financial institutions. Subsection (a) provides that a financial institution shall pay tax at the time of purchase of tangible property to be used by it in the conduct of its business. Subsection (b) provides two alternatives for financial institutions selling personalized checks, coin banks and other tangible personal property subject to tax: (1) obtain a license and collect the tax from its customers, remitting the tax collected along with monthly returns; or (2) elect not to register and file returns, provided that the financial institution pay tax to its suppliers based upon the price which the merchandise is to be sold by the financial institution to its customers and reimburse itself for the tax so paid by collecting the tax from its customers. Because the regulation could be construed to provide an unfair tax advantage for financial institutions, the Department is proposing to delete § 31.26 in its entirety.

The definitions in § 32.1 (relating to definitions) apply to Chapter 32 (relating to exemptions), unless the context clearly indicates otherwise. Section 32.1 is proposed to be amended to delete the definition of "isolated sales" because the definition is only applicable to § 32.21 (relating to charitable, volunteer firemen's and religious organizations, and nonprofit educational institutions), and a definition of "isolated sales" is being added to § 32.21.

To reflect the 1991 amendment to the definition of "manufacture" in section 201(c)(6) of the TRC, the Department is proposing to add the definition of "remanufacturing motor vehicle parts for wholesale distribution" to § 32.1. A 1994 amendment to the definition of "manufacture" in section 201(c)(7) of the TRC has prompted the addition of the definition of "remanufacturing selected items of military equipment" to § 32.1.

The proposed revisions to § 32.2 (relating to exemption certificates) clarify the Department's policy with regard to exemption certificates and delete references to out-of-date forms. Subsection (b)(2)(iii) is proposed to be rewritten to clarify that the exemption certificate shall be properly

completed and that the Department will not recognize it as such if it is not in the possession of the seller or lessor within 60 days after the date of the transaction. Subsection (d)(2) is proposed to be amended to delete outdated instructions and form references and to add language consistent with the current policy and forms.

The current language in § 32.3 (relating to sales for resale) is proposed to be deleted and replaced with a section entitled "resale exemption." The proposed new language clarifies this area (which has been the source of confusion) and provides more detail and direction with regard to the resale exemption.

Consistent with confining references to "isolated sales" to § 32.21, § 32.4 (relating to isolated sales) is proposed to be amended to remove paragraph (6) and to renumber the remaining paragraphs accordingly.

Section 32.5 (relating to multistate sales) is proposed to be amended in a number of areas. As a result of 1991 Legislation, the sale, lease or service of tangible personal property, or the performance of various services enumerated in section 201(k)(11)—(18) of the TRC is now subject to tax. Subsection (a) has been amended and subsection (b)(2) has been added to reflect this statutory change. Subsection (b)(1) is proposed to be amended to properly refer to the United States Postal Service and to clarify that an interstate carrier may be engaged by either the vendor or purchaser without causing the transaction to become subject to tax. The two examples set forth in paragraph (1) are proposed to be deleted and replaced with new examples to modify the amendments in paragraph (1). Subsections (c)—(f) are proposed to be amended to clarify that these subsections address both tangible personal property and taxable services.

The proposed amendment to § 32.21 (relating to charitable, volunteer firemen's and religious organizations, and nonprofit educational institutions) adds a new subsection (a) for definitions. This subsection contains the definition of "isolated sales" as it applies to this section. As a result of creating a subsection devoted to definitions, the current subsections have been relettered accordingly. Within the new subsection (d) pertaining to sales by exempt organizations, the new subparagraph (ii) provides examples of nontaxable and taxable sales by exempt organizations.

To clarify two areas where the Department has noted confusion among taxpayers, § 32.22 (relating to sales to the United States Government or within areas subject to the jurisdiction of the Federal Government) is proposed to be amended. The proposed subsection (a) treats sales of tangible personal property to the United States Postal Service as sales to the United States Government. A new subsection (b) provides that certain sales to or use of tangible personal property for or on behalf of the United States Government are subject to tax and that building maintenance services sold to or used by the United States Government are not subject to tax. The existing subsections have been relettered accordingly.

As a result of 1991 Legislation, the performance of various services enumerated in section 201(k)(11)—(18) of the TRC is now subject to tax. Sections 32.31—32.35 specify the various services that are subject to tax when not directly used in dairying; manufacturing; processing; farming; public utilities or mining. In addition, language is proposed to be added to §§ 32.31 and 32.33 (relating to dairying; and farming) to explain that the farming and dairying exclusion applies to disinfecting or pest control services.

Section 32.36 (relating to printing and related businesses) proposes to add a new subsection (b) to address

the taxability of the various services described in § 32.32(a)(3) (relating to manufacturing; processing) when they are not directly used in printing operations. This new language is also being added to § 32.37 (relating to photographers and photofinishers) in subsection (b)(2)(i). The current § 32.36(b) will be relettered accordingly.

To clarify the existing definition of "credit sales" forth in § 33.1 (relating to definitions), the Department is proposing amendments to the definitions to provide that a credit sale is a sale in which the purchaser pays all or part of the total purchase price after the date of purchase. Because of its use within the chapter and to remove any ambiguity, the definition of "sale" is proposed to be added to § 33.1.

When § 33.2 (relating to scope) was amended in 1994, the Department changed the name of the section to scope. After reviewing this change, the Department has concluded that the original name of the section, "purchase price" is more appropriate. Therefore, this proposal changes the section name to "purchase price." To correct an error in the 1994 publication, § 32.2(b)(5) is proposed to be amended to provide that a gratuity is a voluntary payment by the purchaser or a reasonable mandatory charge by the vendor in lieu of the voluntary payment, that is billed to the purchaser and distributed directly to the vendor's employees for services rendered in connection with the purchase of food or beverages or hotel or motel accommodations. In addition, a new paragraph (6) is proposed to be added to categorize as retail excise taxes various new taxes now in existence within this Commonwealth.

Subsection (a) of § 33.4 (relating to credit and lay-away sales) is proposed to be amended to add three examples that explain when tax shall be remitted to the Department. The Department felt these examples would clarify the section and reduce confusion among some taxpayers.

As a result of *Suburban Cable TV Co. v. Commonwealth*, 570 A.2d 601 (Pa. Cmwlth. 1990) *aff'd per curiam* 527 Pa. 364, 591 A.2d 1054 (1991), the definition of "licensed commercial or educational station" is amended in § 42.1 (relating to definitions) to include a registered cable television company operated under the authority of the Federal Communications Commission.

Section 42.3 (relating to property) is proposed to be amended to conform the section to terminology utilized in the cable industry.

Minor revisions are proposed to §§ 44.2 and 45.1 (relating to cooperative agricultural associations; and exemption of electric cooperative corporations) to incorporate the 1991 Legislation that provides for the taxation of various services enumerated in section 201(k)(11)—(18) of the TRC.

Consistent with the 1991 and 1994 statutory amendments in sections 201(aa) and 204(51) of the TRC (72 P. S. §§ 7201(aa) and 7204(51)), § 46.9 (relating to financial institution security equipment) is proposed to be amended to clarify that building maintenance and building repair services performed on financial institution security equipment are subject to tax.

Section § 47.18(a) (relating to totalizer equipment) is proposed to be amended by deleting the term "resident" because it was determined to be unnecessary and to more appropriately define the term "totalizer company." The section is also being amended to clarify that when the term "corporation" is used in this section, it is referring to a racing corporation. In response to the repeal of taxation

of computer services in Act 1997-7, the section is also being amended to clarify that the nontaxable service referenced in (b)(1) and (2) is a nontaxable computer service.

Finally, § 58.13 (relating to carpeting and other floor coverings) is proposed to be amended to reflect the taxation of various services enumerated in sections 201(k)(11)—(18) of the TRC. Additionally, subsection (a) is deemed unnecessary and is proposed to be deleted. The remaining subsections are relettered accordingly.

Affected Parties

Taxpayers obligated to collect or remit Sales and Use Tax and persons and businesses filing petitions with the Board of Appeals may be affected by the proposed amendments.

Fiscal Impact

The Department has determined that the proposed amendments will have no significant fiscal impact on the Commonwealth.

Paperwork

The proposed amendments will not generate additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The proposed amendments will become effective upon final publication in the *Pennsylvania Bulletin*. These regulations are scheduled for review within 5 years of final publication. No sunset date has been assigned.

Contact Person

Interested persons are invited to submit in writing comments, suggestions or objections regarding the proposed amendments to Anita M. Doucette, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061, within 30 days after the date of the publication of this notice in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 13, 1998, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Finance. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed amendments to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Department, the General Assembly and the Governor of objections raised.

(Editor's Note: A proposal to amend § 32.21 remains outstanding at 27 Pa.B. 6469 (December 13, 1997)).

ROBERT A. JUDGE, Sr.,
Secretary

Fiscal Note: 15-386. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart A. GENERAL PROVISIONS

CHAPTER 7. BOARD OF APPEALS

§ 7.3. Petitions.

(a) *Filing.* Petitions [**should be filed with the Secretary of the Board of Appeals, Post Office Box 8480, Harrisburg, Pennsylvania 17105**] sent through the United States Postal Service shall be addressed to the Pennsylvania Department of Revenue, Board of Appeals, Department 281021, Harrisburg, PA 17128-1021. Petitions sent through all other delivery services shall be addressed to the Pennsylvania Department of Revenue, Board of Appeals, 4th and Walnut Streets, Strawberry Square, 10th Floor, Harrisburg, PA 17120. Petitions should be filed within the time limits prescribed by statute or this title—see § 7.4 (relating to filing of special petitions). Petitions are filed on the date received by the Board. Written petitions received by the Board after the date prescribed by statute or this title, but **either postmarked by the United States Postal Service or presented to other Department personnel [prior to or on the date prescribed by statute or this title] on or before the petition due date**, are deemed to be timely filed [**as of the date of receipt by the other Department personnel**]. The burden is on the taxpayer to present evidence sufficient to prove that the petition was timely postmarked by the United States Postal Service or timely presented to the Department. **When a petition is deemed timely filed by reason of being timely postmarked by the United States Postal Service or timely presented to Department personnel other than personnel at the Board, the statutory period in which the Board is required to render a decision begins to run on the date that the petition is actually received by the Board.**

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§ 7.6. Decision and order.

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(b) The Board's final decision and order will be in writing and signed by one or more members of the Board or a member's designee, except that, in the case of taxes subject to audit and approval by the Department of the Auditor General, the final decision and order is subject to the approval of the Department of the Auditor General.

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CHAPTER 31 IMPOSITION

GENERAL PROVISIONS

§ 31.4. Rentals or leases of tangible personal property.

(a) *Imposition.* Transfers of possession or of custody of tangible personal property for consideration, by whatever means effected and irrespective of the terms employed by the parties to describe the transaction, are taxable. The rental, lease or license to use or consume tangible personal property is subject to tax. For example, when a machine shop grants to another the right to use its machinery on weekends for a fee, the transaction is taxable. Similarly, the grant of a right to use an electronic

computer for a fee is subject to tax. If a transferee fails to pay the tax to the transferor in connection with a taxable transaction, the Commonwealth may collect the tax from either the transferor or transferee.

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(3) If a person leases or rents equipment together with the services of an operator to another person, who is given the right to use or direct the use of the equipment, the transaction is subject to tax. For example, when a company furnishes a motor vehicle with a driver to a customer on a time, mileage or load basis, the transaction is subject to tax if the customer has the right to direct where the vehicle is driven or to otherwise control its use. Similarly, when an owner of a crane furnishes a crane with an operator to a construction contractor, although the technical operation and maintenance of the crane are under the control of the operator, the transaction is subject to tax because the contractor has the right to direct the use of the crane.

(b) Exemptions. Persons who purchase tangible personal property for the predominant purpose of renting or leasing it to others are entitled to claim the resale exemption. Purchases of repair parts or otherwise taxable services for the property are similarly entitled to exemption. Purchases of equipment or supplies used in conjunction with the service or care of rental property are subject to tax [since] because the materials are not considered to be resold.

(1) [If a purchaser uses or consumes property purchased for resale or disposes of property purchased for resale in a manner other than for resale, the purchaser becomes the ultimate consumer or user of the property and shall pay use tax with respect to the taxable use. When the property is used or consumed in a manner other than for resale, the purchaser shall also pay use tax on otherwise taxable services which were performed on the property if the purchaser purchased the services exempt from tax by claiming the resale exemption.] When property is withdrawn from inventory, it will be taxed as follows:

(i) Property permanently withdrawn from inventory is subject to Use Tax upon the prevailing market price of the property at the time it is withdrawn from inventory.

(ii) Property temporarily withdrawn from inventory is subject to Use Tax upon the fair rental value of the property during the period of use. For purposes of this subparagraph, the term "fair rental value" means the amount which would be charged for the property in the open market for a similar period of time and place. When the actual fair rental value is unknown, the Department will recognize 3% of the purchase price as a monthly fair rental value of the property if the purchase price is the fair market value of the property.

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§ 31.5. Persons rendering taxable services to tangible personal property.

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(e) Application of tax to service or maintenance agreement. [Persons] A person who [enter] enters into a "service" [agreements] agreement to render a taxable service [are] to tangible personal property is mak-

ing ["sales] a "sale at retail" and shall collect sales tax [on the entire charge made under the agreement] in accordance with this section. The fact that the agreement may be designated "Inspection," "Maintenance," "Extended Warranty" or by any other name does not change this rule if, under the terms of the agreement, the persons [shall be] are obligated to render a taxable service upon the tangible personal property of their customers. For example, when a firm enters into [agreements] an agreement with a serviceman to have its office equipment inspected, repaired and cleaned, the entire charge, without any deduction for separately stated items, is subject to tax.

(1) If payment for repairs made under the agreement is made by the obligor of the agreement directly to the person making the repairs, the purchaser of the agreement shall pay tax on the purchase price of the agreement and on the amount of each deductible paid under to the agreement.

(2) If under the agreement the obligor of the agreement reimburses the purchaser for the cost of repairs paid for by the purchaser, the purchase price of the agreement is not subject to tax.

(3) Examples are as follows:

(i) "L" law firm purchases an extended service contract for its new photocopier from "M." The cost of the contract is \$200. The contract provides that "M" pays the person making the repairs less a \$50 deductible, which "L" pays. Under the contract, repairs of \$125 are made. At the time "L" purchases the extended service contract, "L" shall pay tax on the \$200 purchase price of the contract and, at the time the \$125 repairs are made, "L" shall pay tax on the \$50 deductible paid in connection with the repairs.

(ii) Mike purchases a new leaf blower and a maintenance agreement from a retail store. The cost of the maintenance agreement is \$15. The maintenance agreement provides that Mike pays for the cost of repairs and is then reimbursed. Mike has \$36 of repairs made to the leaf blower. At the time the repairs are purchased, Mike shall pay tax on \$36 paid for repairs but the \$15 purchase price of the maintenance agreement is not subject to tax.

(iii) Sherry purchases an extended warranty for her new automobile. The cost of the warranty is \$690. Under the warranty, the seller of the warranty pays directly the person making the repairs less a \$100 deductible that Sherry pays. At the time Sherry purchases the warranty, she shall pay tax on the \$690 purchase price and, at the time she pays the deductible in connection with repairs made under the warranty, she shall pay tax on the deductible.

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§ 31.7. Use [tax] Tax.

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(c) Alternate imposition. Use [tax] Tax is generally imposed upon the original purchase price of tangible personal property. Exceptions to this general rule are as follows:

(1) Purchases made 6 months or longer prior to first taxable use—fair market value. For property purchased 6 months or more prior to its first taxable use in this

Commonwealth, the taxpayer may elect to pay the tax on the fair market value of the property at the time of its first use in [the] this Commonwealth rather than on its original purchase price. The fair market value is the prevailing market price of similar personal property at the time and place of its first taxable use. The election to use this alternative base shall be made [within 1 year from the date the return for the taxable use is due] by filing [notice with the Bureau on Form PA-3] a return within 6 months of the first taxable use and by paying the proper tax together with any accrued penalties and interest due.

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§ 31.26. [Financial institutions] (Reserved).

[(a) Purchases by financial institutions. A financial institution shall pay the tax at the time of purchase of all tangible personal property to be used by it in the conduct of its business. This includes all tangible personal property gratuitously furnished by the financial institutions to its customers, such as passbooks, check books, deposit slip books or similar items.

(b) Sales by financial institutions. A financial institution selling personalized check books, coin banks or other items of tangible personal property subject to tax may do one of the following:

(1) Obtain a license, collect the tax from its customers and remit the tax collected along with its monthly returns.

(2) Elect not to register and file returns, if in the latter case it pays tax to its suppliers based upon the price at which the merchandise is to be sold by the financial institution to its customers and reimburse itself for the tax so paid by collecting the tax from its customers.]

CHAPTER 32. EXEMPTIONS

GENERAL PROVISIONS

§ 32.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

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[Isolated sales—Sales of taxable property or services which:

(1) Occur no more frequently than three times nor for more than a total of 7 days in any 1-calendar year.

(2) Are not made from a location at which other businesses are making similar sales of the same taxable property or services upon which tax is required to be collected.]

Manufacturing—The performance as a business of an integrated series of operations which places personal property in a form, composition or character different from that in which it was acquired whether for sale or use by the manufacturer. The change in form, composition or character shall result in a different product having a distinctive name, character and use. Operations such as compounding, fabricating or processing are illustrative of the types of [operation which] operations that may result in such a change although any operation [which

has that result] that results in such a change may be manufacturing. Mere changes in chemical composition or slight changes in physical properties are not sufficient. For example, the C Company, as its business operation, takes coffee beans and thereafter, by mechanical and hand labor, cleans [them] the beans, removes the outer skins and roasts the beans. The roasted coffee, resulting from the C Company's activities, is not a manufactured product, notwithstanding the fact that there has been a change in the color, weight and size of [bean] the beans. The term includes remanufacturing motor vehicle parts for wholesale distribution and remanufacturing selected items of military equipment.

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Remanufacturing motor vehicle parts for wholesale distribution—The remanufacture for wholesale distribution of motor vehicle parts from used parts acquired in bulk by a remanufacturer that uses an assembly line process involving the complete disassembly of the parts and the integration of the components thereof with other used or new components. The term includes the salvaging, recycling or reclaiming of used parts by the remanufacturer.

Remanufacturing selected items of military equipment—The remanufacture or retrofit of aircraft, armored vehicles or other defense-related vehicles having a finished value of at least \$50,000 using a process that involves the disassembly of the aircraft, vehicles, parts or components, including electric or electronic components; the integration of those parts and components with other used or new parts or components, including the salvaging, recycling or reclaiming of the used parts or components; and the assembly of the new or used aircraft, vehicles, parts or components. For purposes of this definition, the following terms or phrases have the following meanings:

(i) "Aircraft" means fixed wing aircraft, helicopters, powered aircraft, tilt-rotor or tilt-wing aircraft, unmanned aircraft and gliders.

(ii) "Armored vehicles" means tanks, armed personnel carriers and all other armed track or semi-track vehicles.

(iii) "Other defense-related vehicles" means trucks, truck tractors, trailers, jeeps and other utility vehicles, including any unmanned vehicles.

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§ 32.2. Exemption certificates.

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(b) Relief from tax liability. A seller or lessor who accepts in good faith an exemption certificate which discloses a proper basis for exemption upon its face is relieved of liability for collection or payment of tax upon transactions covered by the certificate.

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(2) Acceptance in good faith. An exemption certificate to be accepted in good faith shall also meet the following requirements:

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(iii) [The] A properly completed certificate shall be in the physical possession of the seller or lessor, and available for Departmental inspection, on or before the

60th day following the date of the sale or lease to which the certificate relates. [Where a certificate is not made available for Departmental inspection on or before that time, the seller or lessor shall prove to the satisfaction of the Department, by means of evidence other than an exemption certificate, that the sale or lease in question is, in fact, exempt. In the absence of proof the transaction will be deemed taxable and assessed as such.] If the purchaser claims the resale exemption, a properly completed certificate shall contain the purchaser's sales tax license number or reasonable explanation as to why the purchaser is not required to have a sales tax license number. The Department will not recognize a properly completed exemption certificate that is not in the possession of the seller or lessor within 60 days after the date of the transaction. A vendor of taxable property or services who fails to obtain a properly completed certificate shall have the burden of establishing that the sale is exempt from tax.

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(d) *Forms of certificates.* The following exemption certificate forms and instructions have been promulgated by the Department:

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(2) *Forms for purchase of motor vehicles.* [The following form is designed for purchase of motor vehicles, and is not valid for purposes other than that for which it is designed: *Form REV-191 Vehicles Sales and Use Tax Return.* This form shall be used for claims of exemption upon the purchase or lease of a motor vehicle, trailer, semitrailer or tractor which is required by law to be registered with the Bureau of Motor Vehicles, and shall accompany the application for title.] The Department of Transportation forms MV-1 and MV-4ST shall be used in connection with the payment of tax or the claim for exemption upon the purchase or use of a motor vehicle, trailer, semitrailer, tractor or motorcycle requiring title or registration for use on the highway.

§ 32.3. [Sales for resale] Resale exemption.

(a) [Sales for resale exempt. A transfer for consideration of the ownership, custody or possession of tangible personal property or the rendition of taxable services for the purpose of resale is exempt from tax. Transfer for the purpose of resale shall include the following:

(1) The transfer of tangible personal property or rendition of taxable services on, or purchase of, repair parts for property which is:

(i) To be sold, rented or leased in the regular course of business. However, the sale of malt or brewed beverages or liquor to a person who is a retail dispenser or a holder of a retail liquor license under The Liquor Code (47 P. S. §§ 1-101—9-902), does not qualify for the resale exemption.

(ii) To be physically incorporated as ingredient or constituent into other personal property which is to be sold in the regular course of business or transported in interstate commerce to a destination outside of this Commonwealth.

(2) Personal property purchased or having a situs within this Commonwealth solely for the purpose of being processed, fabricated or manufactured into,

attached to or incorporated into personal property and thereafter transported outside of this Commonwealth for use exclusively outside this Commonwealth.

(b) *Presumption of taxability.* Every sale of tangible personal property is presumed to be at retail and therefore subject to tax. A purchaser claiming the resale exemption shall therefore establish that the specific property purchased is to be resold. A purchaser who uses or consumes property purchased for resale or who disposes of property purchased for resale in a manner other than by resale becomes the ultimate consumer or user of the property and shall pay a use tax with respect to the taxable use.]

Resale exemption. The following transactions qualify for a resale exemption:

(1) The transfer of ownership, custody or possession of, including the grant of a license to use, tangible personal property or taxable services that is sold, rented or leased in the regular course of the purchaser's business.

(2) The transfer of ownership of tangible personal property that is physically incorporated as an ingredient or constituent of other tangible personal property that is sold in the regular course of the purchaser's business.

(3) The obtaining of the following taxable services performed upon tangible personal property that is sold, rented or leased in the regular course of the purchaser's business:

(i) The service of printing or imprinting tangible personal property furnished either directly or indirectly by the purchaser.

(ii) The service of washing, cleaning, waxing, polishing or lubricating of motor vehicles.

(iii) Inspecting of motor vehicles under the mandatory requirements of 75 Pa.C.S. §§ 101—9805 (relating to the Vehicle Code).

(iv) The service of repairing, altering, mending, pressing, fitting, dyeing, laundering, dry cleaning or cleaning tangible personal property other than wearing apparel or shoes.

(v) The service of applying or installing tangible personal property as a repair or replacement part of other tangible personal property other than wearing apparel or shoes.

(b) *Special resale exemption.* The following transactions qualify for a special resale exemption:

(1) The obtaining of the following taxable services performed upon tangible personal property that is transported in interstate commerce to a destination outside this Commonwealth.

(i) The service of printing or imprinting tangible personal property furnished either directly or indirectly by the purchaser.

(ii) The service of washing, cleaning, waxing, polishing or lubricating of motor vehicles.

(iii) Inspecting of motor vehicles under the mandatory requirements of 75 Pa.C.S. §§ 101—9805.

(iv) The service of repairing, altering, mending, pressing, fitting, dyeing, laundering, dry cleaning or cleaning tangible personal property other than wearing apparel or shoes.

(v) The service of applying or installing tangible personal property as a repair or replacement part of other tangible personal property other than wearing apparel or shoes.

(2) The transfer of ownership of tangible personal property purchased solely for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into tangible personal property within this Commonwealth and thereafter transported outside this Commonwealth.

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§ 32.4. Isolated sales.

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(b) Transactions which are not isolated sales. The following are examples of transactions which [shall] will not be considered isolated sales:

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(6) [The sale of a property by a charitable, volunteer firemen's or religious organization or non-profit educational institution as a fund raising activity, if the following is applicable:

(i) The sales or series of sales is conducted more than three times or more than a total of 7 days in any year.

(ii) The organization or institution is making sales of taxable property other than food or beverages sold at or from a school or church, on the same premises in competition with other vendors required to collect tax.

(7) [The sale of motor vehicles, trailers, [semitrailers] semitrailers, motor boats, aircraft, snowmobiles or other similar tangible personal property required under Federal law or the laws of the Commonwealth to be registered or licensed.

[(8)](7) * * *

* * * * *

§ 32.5. Multistate sales.

(a) Transactions where delivery is made to locations within this Commonwealth. [Where delivery of taxable property or services is made to locations within this Commonwealth, the transactions shall be subject to tax. Delivery in this Commonwealth to a nonresident purchaser does not make the transaction exempt.] The sale, rental or lease of, or service performed on, tangible personal property, or the performance of a taxable service enumerated in section 201(k)(11)—(18) of the TRC (72 P. S. § 7201(k)(11)—(18)), which is delivered in this Commonwealth to a purchaser, lessee or an agent of the purchaser or lessee is subject to tax, notwithstanding that the purchaser, lessee or agent of the purchaser or lessee may subsequently transport the property to a location outside this Commonwealth.

(b) Transactions where delivery is made to locations outside this Commonwealth.

(1) When tangible personal property is sold, leased or serviced within this Commonwealth and the vendor, lessor or serviceperson is obligated to deliver it to a point outside of this Commonwealth, or to deliver it to [a] an interstate carrier or to the [mails] United States Postal Service for transportation to a point outside this

Commonwealth, [sales tax does not apply] the transaction is not subject to tax. [However, where tangible personal property under a sale, lease or service is delivered in this Commonwealth to the buyer or lessee or their agent, other than an interstate carrier, the tax applies, notwithstanding that the buyer or lessee may subsequently transport the property out of this Commonwealth.] The interstate carrier may be engaged by either the vendor or purchaser.

Examples:

[Henrietta Higgins, a speech pathologist, purchased disposable laboratory supplies from a Commonwealth retailer. The retailer delivers the supplies (cost and freight) to Providence, Rhode Island. Title to the supplies passed to Higgins at the Commonwealth point of shipment, but sales tax does not apply because delivery is made out-of-State.

Ahab Inc., a maker of specialized steel in this Commonwealth, supplies harpoons to Neptune Inc., a Massachusetts fishing concern. The harpoons are delivered to Neptune Inc.'s agent (freight on board) Harrisburg, Pennsylvania for ultimate delivery in Massachusetts. Sales tax applies to this transaction because delivery is made and title passes in this Commonwealth.]

"A," a resident of New Jersey, obtains a repair service for his motor vehicle at a repair shop located in this Commonwealth. The repair shop performs the repairs and delivers the motor vehicle to "A" at "A's" New Jersey residence. The charge for the repair service is not subject to Pennsylvania Sales or Use Tax.

"B," a Delaware resident, has his french horn repaired by a Philadelphia instrument repair shop. The repair shop performs the required repairs and ships the horn to "B" in Delaware by the United States Postal Service. The charge for the repair service is not subject to Pennsylvania Sales or Use Tax.

(2) When an otherwise taxable service is performed within this Commonwealth and the vendor, lessor or serviceperson is obligated to deliver the service to a point outside of this Commonwealth, or to deliver the service to an interstate carrier or to the United States Postal Service for transportation to a point outside this Commonwealth, the transaction is not subject to tax.

Examples:

"K," a New York business, contracts with "H," a Pennsylvania temporary help supply agency, to provide a temporary employe whose wages are paid by "H." The employe reports for work at "K's" New York business location where the employe will perform duties under "K's" supervision. The contract represents a help supply service but is not subject to Pennsylvania Sales or Use Tax because the service was delivered outside of this Commonwealth.

"J," an Ohio retailer, purchases an employment contract from "M," a Pennsylvania employment agency. The employe is required to report for work at a location in Ohio. The purchase is not subject to Pennsylvania Sales

or Use Tax because the employment service was delivered outside of this Commonwealth.

(c) [When] Collection of tax by a vendor, lessor or serviceperson shall collect tax. A vendor, lessor or serviceperson [engaged in business activity] maintaining a place of business within this Commonwealth shall collect the tax imposed by the [act] TRC with respect to the following transactions unless they are otherwise exempt:

(1) [Where] If the tangible personal property or the taxable service is shipped from a point outside this Commonwealth to a point within this Commonwealth.

(2) [Where] If the tangible personal property or the taxable service is shipped from a point within this Commonwealth to another point within this Commonwealth by a route a portion of which is outside this Commonwealth.

(3) [Where] If the tangible personal property or the taxable service is purchased and delivered within this Commonwealth [even though] and the purchaser subsequently transports the tangible personal property or the taxable service to a location outside this Commonwealth. [with the following exceptions:

(i) Property purchased or having a situs within this Commonwealth solely for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into personal property and thereafter transported outside this Commonwealth for use exclusively outside this Commonwealth shall be deemed to be a resale and therefore is not subject to tax.

(ii) The sale at retail or use of motor vehicles, trailers or semitrailers, or bodies attached to the chassis thereof sold to a nonresident of this Commonwealth to be used outside this Commonwealth which are registered in a state other than this Commonwealth within 20 days after delivery to the vendee is not subject to tax.]

(d) Maintenance of records. A vendor, lessor or serviceperson [making sales of] selling tangible personal property [exempt from the] or a service which is not subject to tax [set forth in this section] because the property or service is delivered to an out-of-State location shall maintain records of the transactions, together with documents evidencing the delivery of the tangible personal property or taxable service to a destination outside this Commonwealth. The documents include waybills, bills of lading, insurance or registry receipt issued by the United States [Post Office] Postal Service, mail orders, shipping orders or other data pertinent to the purchase and delivery.

(e) [Property] Tangible personal property or a taxable service [is] not exempt by reason of being used in interstate [and] or foreign commerce. Unless the tangible personal property or taxable service is otherwise exempt by reason of this section or this chapter, the sale or use of tangible personal property or a taxable service in this Commonwealth [shall be] is subject to [the] tax notwithstanding the fact that the purchaser is engaged in interstate or foreign commerce or that the tangible personal property or taxable service may be intended for use in interstate or foreign commerce.

(f) [Interim storage of property to be used exclusively outside this Commonwealth. Effective March 4, 1971, the interim storage in] Use within this Commonwealth purchased outside. The use within this Commonwealth of tangible personal property or a taxable service purchased outside this Commonwealth for use outside this Commonwealth and upon which no work or services are performed is [a taxable use] subject to tax. The use tax shall be based upon the original purchase price of the tangible personal property or taxable service. [The storage charges are exempt from tax.]

Examples:

"P," a Pennsylvania corporation, operates from its corporate headquarters in Philadelphia. "P" also has business locations in Ohio, Indiana and California. "P" purchased word processor paper in bulk which was shipped to its Philadelphia location. "P" broke down the bulk shipment and rewrapped and shipped quantities of the paper to its business locations in Ohio, Indiana and California. "P's" purchase of the entire shipment of paper is subject to tax because "P" made a use of the paper in this Commonwealth.

Contractor "C" purchases lumber within the state of Delaware which is delivered by the vendor to "C's" business location in this Commonwealth. The lumber is stored in "C's" warehouse and later transported to New Jersey where "C" uses the lumber to construct a building. No work or services are performed on the lumber during storage. "C's" storage of the lumber within this Commonwealth constitutes a taxable use. Thus, the lumber is subject to Pennsylvania use tax.

NONBUSINESS EXEMPTIONS

§ 32.21. Charitable, volunteer firemen's and religious organizations, and nonprofit educational institutions.

(a) Definition. The following term, when used in this section, has the following meaning, unless the context clearly indicates otherwise:

Isolated sales—Sales of taxable property or services which:

(i) Occur no more than three times nor for more than a total of 7 days in a calendar year.

(ii) Are not made from a location at which other businesses are making sales of similar property or services upon which tax is required to be collected.

[(a)](b) * * *

* * * * *

[(b)](c) * * *

* * * * *

[(c)](d) Sales by exempt organizations.

* * * * *

(2) Isolated [sale] sales.

(i) An exempt organization need not collect and remit tax upon the sale of property in an isolated sale [as defined in § 32.1 (relating to definitions)].

(ii) The following are examples of nontaxable and taxable sales by an exempt organization:

(A) "E", an exempt organization, sells stadium cushions to the public on three separate Saturdays during a calendar year from a location at which no other organizations or businesses are selling similar items. "E" makes no other taxable sales during the calendar year. "E" would not be required to collect sales tax on its sales of stadium cushions.

(B) "E", an exempt organization, sells spaghetti dinners every Sunday afternoon. The dinners are consumed on the premises. All sales of spaghetti dinners by "E" are subject to tax because "E" makes taxable sales more than three times in a calendar year.

(3) *Food and beverages.* An exempt organization [which is either] engaged in the business of catering or [the operation of] operating a restaurant, cafe, lunch counter or other eating [place] establishment for the purpose of selling prepared food or beverages is required to obtain a sales tax license number and collect and remit tax upon its sales of food or beverages unless the [sales] sale of food or beverages:

(i) Qualifies as an isolated sale [as defined by § 32.1.].

* * * * *

(4) *Purchases of property for resale.* An exempt organization purchasing property for resale in connection with fundraising activities is required to hold a Pennsylvania [sales tax] Sales Tax license number for the purpose of collecting tax, unless the sale qualifies as an isolated sale [as defined in § 32.1].

* * * * *

§ 32.22. Sales to the United States Government or within areas subject to the jurisdiction of the Federal Government.

(a) *Sales to the United States Government.* Sales of tangible personal property or services to the [Government of the] United States Government are not subject to tax under the [act] TRC. Tax need not be collected on the sales to a [regular department] governmental agency, such as Defense, Interior, Agriculture, [Post Office,] Commerce of the United States. [Reference should be made to § 32.2 (relating to exemption certificates).] Sales of tangible personal property to the United States Postal Service shall be considered sales to the United States Government. Federal Reserve Banks and their branch banks are exempt from the payment of [sales and use taxes] Sales and Use Tax under the [act] TRC. Reference should also be made to section 7 of the Federal Reserve Act (12 U.S.C.A. § 290). However, commercial banks which are merely member banks of the Federal Reserve System are subject to sales and use tax. The only banks in [the] this Commonwealth entitled to this exemption are the Federal Reserve Bank of Philadelphia, District No. 3, and the Pittsburgh Branch of the Federal Reserve Bank of Cleveland, District No. 4.

(b) *Construction contracts.* The sale to or use of tangible personal property by construction contractors in the construction, reconstruction, remodeling, repair and maintenance of real estate, includ-

ing buildings, roads, structures and bridges, for or on behalf of the United States Government, is subject to tax. However, the sale to or use of building maintenance services by the United States Government is not subject to tax.

[(b)] (c) *Nonexempt agencies.* Nonexempt agencies include National Banks, Federal Savings and Loan Associations, Joint Stock Land Banks[,] and National Park Concessionaires [, The Atomic Energy Commission, Federal licensees such as warehouses and stockyards, and construction contractors engaged in the improvement of real estate such as buildings, roads, structures, bridges owned by an exempt Federal agency, and similar corporations, companies, institutions or persons may not be exempt].

[(c)](d) * * *

BUSINESS EXEMPTIONS

§ 32.31. Dairying.

(a) *Equipment, machinery, parts and foundations therefor and supplies used directly in dairying.* The purchase or use of tangible personal property or services performed thereon by a person engaged in the business of dairying [shall be] is exempt from tax if the property is predominantly used directly [by him] in dairying operations. Purchases of vehicles required to be registered under 75 Pa.C.S. §§ 101—[9821] 9805 (relating to the Vehicle Code) as well as supplies and repair parts for the vehicles are subject to tax. There is no exemption for maintenance facilities or for materials or supplies to be used or consumed in [a] construction, reconstruction, remodeling, repair or maintenance of real estate other than machinery, equipment or parts therefor that may be affixed to the real estate. [Beginning March 4, 1971, foundations for equipment and machinery became subject to tax and remained taxable until February 9, 1981. Effective February 7, 1981, foundations] Foundations used to support equipment, machinery and parts used directly in dairying [shall be] are exempt from tax.

* * * * *

(2) *Property directly used; predominant use.* The purchase or use by a dairyman of property in the following categories, when predominately used directly in dairying, [shall be] is exempt from tax. [Where] If a single unit of the property is put to use in two different activities, one of which is a direct use and the other of which is not, the property may not be exempt from tax unless the dairyman makes use of the property more than 50% of the time directly in dairying operations.

* * * * *

(vi) *Disinfecting or pest control services.*

(3) *Property or services not directly used.* Property or services in the following categories [is] are not directly used in dairying operations, and the purchase or use of the property or services [shall be] is subject to tax.

* * * * *

(ii) *Maintenance facilities.* Maintenance, service and repair work is not a dairying operation. Maintenance facilities, including tools, equipment and supplies predominantly used in performing the work [.For], for example: chain hoists, tire spreaders, welding equipment, drills, sanders, wrenches, paint brushes and sprayers,

oilers, absorbent compounds, dusting compounds, air blowers and wipers[) shall be], are subject to tax. However, replacement parts [which] that are used to replace worn parts upon exempt machinery and equipment [(For), for example: motors, belts, screws, bolts or gears()], and operating supplies [which] that are [actively and continuously] directly used in the operation of exempt machinery and equipment [(For), for example: fuel, lubricants, paint and compressed air()] shall be], are also exempt from the tax. Equipment and supplies, including soaps and cleaning compounds, brushes, brooms, mops[,] and similar items, used in general cleaning and maintenance of dairy property [shall be] are subject to tax.

* * * * *

(iv) **Selected services.** The following services are not directly used in dairying and are subject to tax:

- (A) Building maintenance or building cleaning services.
- (B) Lawn care services.
- (C) Help supply services.
- (D) Employment agency services.
- (E) Lobbying services.
- (F) Secretarial and editing services.
- (G) Adjustment and collection services.
- (H) Credit reporting services.
- (I) Self-storage services.

* * * * *

§ 32.32. Manufacturing; processing.

(a) *Equipment, machinery, parts and foundations therefor and supplies used directly in manufacturing or processing.* The purchase or use of tangible personal property or services performed thereon by a person engaged in the business of manufacturing or processing is exempt from tax if the property is predominantly used directly by him in manufacturing or processing operations. Purchases of vehicles required to be registered under 75 Pa.C.S. §§ 101—[9821] 9805 (relating to the Vehicle Code) as well as supplies and repair parts for the vehicles [shall be] are subject to tax. There is no exemption for maintenance facilities or for materials or supplies to be used or consumed in construction, reconstruction, remodeling, repair or maintenance of real estate other than machinery, equipment or parts therefor that may be affixed to the real estate. [Beginning March 4, 1971, foundations for equipment and machinery became subject to tax and remained taxable until February 9, 1981. Effective February 7, 1981, foundations] Foundations used to support equipment, machinery and parts used directly in manufacturing or processing [shall be] are exempt from tax.

* * * * *

(3) *Property or services not directly used.* Property or services in the following categories [is] are not directly used in manufacturing or processing operations and the purchase or use of the property [shall be] or services are subject to tax.

* * * * *

(iv) **Selected services.** The following services are not directly used in manufacturing or processing and are subject to tax:

- (A) Building maintenance or building cleaning services.
- (B) Lawn care services.
- (C) Disinfecting or pest control services.
- (D) Help supply services.
- (E) Employment agency services.
- (F) Lobbying services.
- (G) Secretarial and editing services.
- (H) Adjustment and collection services.
- (I) Credit reporting services.
- (J) Self-storage services.

* * * * *

§ 32.33. Farming.

(a) *Equipment, machinery, parts and foundations therefor and supplies used directly in farming.* The purchase or use of tangible personal property or services performed thereon by a person engaged in the business of farming is exempt from tax if the property is predominantly used directly by him in farming operations. Purchases of vehicles required to be registered under 75 Pa.C.S. §§ 101—[9821] 9805 (relating to the Vehicle Code) as well as supplies and repair parts for the vehicles are subject to tax. There [shall be] is no exemption for maintenance facilities or tools, materials or supplies which are used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate or farm equipment. [Beginning March 4, 1971, foundations for equipment and machinery became subject to tax and remained taxable until February 9, 1981. Effective February 7, 1981, foundations] Foundations used to support equipment, machinery and parts used directly in farming [shall be] are exempt from tax.

* * * * *

(2) *Property directly used; predominant use.* The purchase or use by a farmer of property in the following categories, when predominantly used directly in farming, is exempt from tax. When a single unit of the property is put to use by a farmer in two different activities, one of which is a direct use and the other of which is not, the property is not exempt from tax unless the farmer makes use of the property more than 50% of the time directly in farming operations.

* * * * *

(iv) *Packaging; preserving.* Wrapping equipment and supplies, including internal packing materials and returnable containers, used in packaging which passes to the ultimate consumer are directly used and therefore exempt. Property used to handle and preserve farm products upon the farm premises, and to prevent or deter the destruction, injury or spoilage of farm products, or productive animals or plants, is exempt from tax. Examples of [such] this property include the following:

* * * * *

- (F) Disinfecting or pest control services.

* * * * *

(3) *Property or services not directly used.* Property or services in the following categories [is] are not used directly in a farming operation and the purchase or use of the property [shall be] or services are subject to tax.

* * * * *

(iv) *Selected services.* The following services are not directly used in farming and are subject to tax:

(A) Building maintenance or building cleaning services.

(B) Lawn care services.

(C) Help supply services.

(D) Employment agency services.

(E) Lobbying services.

(F) Secretarial and editing services.

(G) Adjustment and collection services.

(H) Credit reporting services.

(I) Self-storage services.

* * * * *

§ 32.34. Public utilities.

(a) *Equipment, machinery, parts and foundations therefor, and supplies used directly in rendering public utility service.* The purchase or use by a public utility of tangible personal property or services performed thereon to be predominantly used directly by it in producing, delivering or rendering of a public utility service or constructing, reconstructing, remodeling, repairing or maintaining facilities directly used in the service is exempt from tax, whether or not the facilities constitute real estate. [However, for purposes of this exemption, real estate does not include buildings, roads or similar facilities. Effective March 4, 1971, foundations for exempt machinery or equipment became subject to tax and remained taxable until February 9, 1981. Effective February 7, 1981, foundations] Foundations used to support equipment, machinery and parts used directly in rendering a public utility service are exempt from tax. The term "foundations" includes sand, gravel, crushed rock, concrete or similar material used as bedding or surrounding pipe used directly in rendering a public utility sanitary sewer or water service. [Purchases of any vehicles] The purchase of a vehicle required to be registered under 75 Pa.C.S. §§ 101— [9909] 9805 (relating to the Vehicle Code), except those vehicles used directly by a public utility engaged in business as a common carrier as well as supplies and repair parts for the vehicles, is subject to tax.

* * * * *

(3) *Property or services not directly used.* Property or services in the following categories [is] are not directly used in public utility operations and the purchase or use of the property or services is subject to tax.

* * * * *

(iv) *Selected services.* The following services are not directly used in public utility operations and are subject to tax:

(A) Building maintenance or building cleaning services.

(B) Lawn care services.

(C) Disinfecting or pest control services.

(D) Help supply services.

(E) Employment agency services.

(F) Lobbying services.

(G) Secretarial and editing services.

(H) Adjustment and collection services.

(I) Credit reporting services.

(J) Self-storage services.

* * * * *

§ 32.35. Mining.

(a) *Equipment, machinery, parts and foundations therefor and supplies used directly in mining.* The purchase or use of tangible personal property or services performed thereon by a person engaged in the business of mining is exempt from tax if the property is predominantly used directly by the person in mining operations. Purchases of a vehicle required to be registered under 75 Pa.C.S. §§ 101— [9909] 9805 (relating to the Vehicle Code), as well as supplies and repair parts for the vehicles [is] are subject to tax. There is no exemption for maintenance facilities or for materials or supplies to be used or consumed in construction, reconstruction or remodeling of real estate other than machinery, equipment and parts therefor that may be affixed to the real estate. [Beginning March 4, 1971, foundations for equipment and machinery became subject to tax and remained taxable until February 9, 1981. Effective February 7, 1981, foundations] Foundations used to support equipment, machinery and parts used directly in mining are exempt from tax.

* * * * *

(3) *Property or services not directly used.* Property or services in the following categories [is] are not used directly in mining operation, and the purchase or use of the property or services is subject to tax.

* * * * *

(iv) *Selected services.* The following services are not directly used in mining and are subject to tax:

(A) Building maintenance or building cleaning services.

(B) Lawn care services.

(C) Disinfecting or pest control services.

(D) Help supply services.

(E) Employment agency services.

(F) Lobbying services.

(G) Secretarial and editing services.

(H) Adjustment and collection services.

(I) Credit reporting services.

(J) Self-storage services.

* * * * *

§ 32.36. Printing and related businesses.

(a) [*The printing*] *Printing exemption.* Printing and related businesses are exempt from sales and use taxes in accordance with the following:

(1) *Machinery*[,]; *equipment*[,]; *parts; foundations for machinery, equipment and parts; and supplies used directly in printing.* Printing, when engaged in as a business, is included in manufacturing under the TRC

and regulations applicable to manufacturers are also applicable to printers. Equipment, **or** machinery [—], including components of a computer system, accessories, parts and supplies therefor [**which are**] used predominantly and directly in the business of printing, regardless of the technology involved, is exempt from tax. [**Where**] **If** equipment is used for both exempt and nonexempt purposes, the predominant use test shall determine its tax status. [**Effective February 7, 1981, foundations**] **Foundations** used to support equipment, machinery and parts used directly in printing are exempt from tax. See § 32.32 (relating to manufacturing; processing). [**With the exception of purchases involving improvements to real estate, directly used property**] **Property directly used in printing/manufacturing** may be purchased free of tax upon the presentation to a vendor of a properly executed exemption certificate [**certifying that the purchase will be directly used in printing—manufacturing**]. For example, company X has a computer printer and photocopy machine [**which**] that predominantly [**supports**] **support** administrative operations. Neither device qualifies for the printing exemption. Company Y [**has**] **operates** a print shop [**operated as a separate profit-center reproducing**] that reproduces multiple copies of substantially identical printed matter. The tangible personal property in this print shop [**which is**] predominantly used in printing qualifies for the sales tax exemption.

* * * * *

(b) Property or services not directly used. Property and services described in § 32.32(a)(3)(relating to manufacturing; processing) are not directly used in printing operations and the purchase or use of the property or services is subject to tax.

[(b)](c) * * *

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§ 32.37. Photographers and photofinishers.

* * * * *

(b) Manufacturing exemption. The purchase or use of materials, equipment and supplies by a photographer or photofinisher is exempt from tax if the property is predominantly used directly [**by him**] in the photography or photofinishing operation. This exemption is restricted to photographers and photo-finishers and is not available to photo-refinishers.

* * * * *

(2) Property or services not directly used.

(i) Property and services described in § 32.32(a)(3) (relating to manufacturing; processing) are not directly used in photography and photofinishing operations and the purchase or use of the property or services is subject to tax.

(ii) The following are examples of equipment, materials and supplies [**which**] that do not qualify for the manufacturing exemption: camera cases, gadget bags, lens cases, projectors, screens, projection lamps, projection tables, stands, slide files, motion picture reels and cans, viewers, viewing tables, negative files, negative envelopes, bulk film loaders, film cassettes, paper safes and cleaners for film and lenses.

* * * * *

CHAPTER 33. COMPUTATION OF TAX

§ 33.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Credit [sales] sale—[Sales] A sale in which the purchaser pays **all or** part of the total purchase price subsequent to the [**time**] **date** of purchase. [**A sale shall be deemed to be on credit whether by open credit—including the use of a credit card—or a secured transaction such as a chattel mortgage, conditional sale or bailment lease.**] **The term does not include a lease, a bailment lease, a conditional sale or an installment sale.**

* * * * *

Purchase price—The total value of anything paid or delivered or promised to be paid or delivered, whether it be money or otherwise, in consideration of a sale at retail or purchase at retail not including a rental or license to use. See § 31.4 (relating to rentals or leases of tangible personal property). **The term does not include separately stated employe costs related to the provision of interior office building cleaning services, help supply services or employment agency services. See §§ 60.1, 60.4 and 60.5 (relating to building maintenance or building cleaning services; help supply services; and employment agency services).**

Sale—A transaction in which the seller transfers ownership of tangible personal property to a purchaser for a purchase price.

§ 33.2. [Scope] Purchase price.

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(b) Exclusions. Amounts which are excluded from the taxable portion of purchase price, if separately stated and identified, include:

* * * * *

(5) Gratuity. A voluntary payment by the purchaser or a reasonable mandatory charge by the vendor in lieu of the voluntary payment, which is billed to the purchaser **and distributed directly to the vendor's employes** for services rendered in connection with the purchase of food or beverages or hotel or motel accommodations.

(6) Retail excise taxes. Excise taxes such as **local sales tax, public transportation assistance tax and vehicle rental tax imposed upon the purchase price and paid by the purchaser.**

* * * * *

§ 33.4. Credit and lay-away sales.

(a) Tax collection for credit sales. If a sale, with respect to which a tax is required to be collected, is wholly or partly on credit, the seller shall require the purchaser to pay the full amount of the tax due on the entire purchase price at the time the purchase is made or within 30 days thereafter. The failure of the purchaser to remit the tax due to the seller does not relieve the seller of the obligation [**of reporting**] **to report** the sale and [**paying**] **pay** to the Commonwealth the tax [**he should have collected**] **due.** The tax shall be remitted by the seller with the tax return covering the period in which either the [**purchase**] **sale** was made or the tax [**was or**] should have been collected.

Examples:

(1) "S" seller makes a cash sale of taxable property on May 10. "S" collects the applicable tax at the time of the sale. "S" is required to remit the tax with the tax return for the month of May because the tax was collected at the time of sale.

(2) "S" seller makes a credit sale of taxable property on May 10. "S" collects the applicable tax on June 10. "S" is required to remit the tax with the tax return for the month of May which is due June 20.

(3) "S" seller makes a credit sale of taxable property on May 22. "S" collects the tax on July 31. "S" is required to remit the tax with the return for the month of June because "S" is required to remit the tax within 30 days of the date of sale.

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CHAPTER 34. REGISTRATION, RECORDKEEPING AND RETURNS

§ 34.4. Direct payment permit.

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(b) *Requirements.* To receive a Direct Payment Permit, the following requirements shall be met by the taxpayer:

* * * * *

(5) Direct Payment Permit holders are required, as a condition of the issuance of the permission, to provide the Department access to the records, **including electronic tapes or disks**, maintained to account for the tax due.

(6) The taxpayer shall be licensed or registered at the time of applying for a Direct Payment Permit and shall maintain the license or registration during the period in which it holds a Direct Payment Permit number.

* * * * *

(e) *General restrictions upon use of Direct Payment Permit.* A Direct Payment Permit may never be used in conjunction with the following transactions:

* * * * *

(2) Purchase of prepared food or beverages at an eating place **or from a caterer.**

* * * * *

CHAPTER 42. BROADCASTING

§ 42.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Licensed commercial or educational station—A broadcasting station operating under one of the following Federal Communications Commission licenses is a licensed commercial or educational station:

* * * * *

(v) **Cable television company.**

§ 42.3. Property.

(a) *Property directly used.* The following are examples of equipment, parts and accessories, and materials and supplies which, when predominantly used directly by a licensed commercial or educational station in the process

of broadcasting are exempt from tax. This exemption applies even though the equipment is part of a mobile unit.

* * * * *

(2) **Transmitter or receiver** equipment, including technical equipment located at transmitter **or receiver** sites.

* * * * *

(7) **Cable television distribution system equipment, including video switching equipment, modulators, combiners, amplifiers, cable, converter boxes and similar items.**

* * * * *

CHAPTER 44. FARMING AND DAIRYING

§ 44.2. Cooperative agricultural associations.

* * * * *

(b) *Sales and use tax exemption.* Cooperative agriculture associations which are required to pay corporate net income tax under the provisions of the Cooperative Agriculture Association Corporate Net Income Tax Act (72 P. S. §§ 3420-21—3420-30) are exempt from the payment of sales and use tax on their purchases of tangible personal property **and services**. The exemption does not apply to the purchase, lease, repair or maintenance service of any motor vehicle required to be registered under 75 Pa.C.S. §§ 101—[**9910**] **9805** (relating to the Vehicle Code). The exemption does not inure to a construction contractor who, under a construction contract with a cooperative agriculture association, is required to purchase materials, supplies or equipment which are installed so as to become part of the real estate under a construction contract.

* * * * *

CHAPTER 45. PUBLIC UTILITIES

§ 45.1. Exemption of electric cooperative corporations.

Corporations formed under 15 Pa.C.S. §§ 7301—7359 (relating to the Electric Cooperative Law of 1990) are by reason of 15 Pa.C.S. § 7333 (relating to license fee; exemption from excise taxes) exempt from the payment of [**sales and use tax**] **Sales and Use Tax upon their purchase of tangible personal property and services** under [**the provisions of**] Article II of the TRC (72 P. S. §§ 7201—7282). The corporations shall furnish their vendors with an exemption certificate setting forth that they are corporations formed under the Electric Cooperative Corporation Act and that they are therefore exempt from the [**sales and use tax**] **Sales and Use Tax** imposed by that act on purchases of property to be used in the activities of the corporations.

CHAPTER 46. CONSTRUCTION CONTRACTORS

§ 46.9. Financial institution security equipment.

* * * * *

(b) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Building maintenance services—The performance of routine and periodic services upon a building to keep the building in a satisfactory operating condition. The term includes cleaning, oiling, greasing and replacing parts. The term does not include building repair services.

Building repair services—Services to a building that do not qualify as building maintenance or building cleaning services.

* * * * *

(e) [**Maintenance**] **Repair and maintenance.** [**Maintenance**] **Repair and maintenance** shall conform [**with**] to the following:

(1) **Repair.**

(i) [**Maintenance**] **Repair** of installed security equipment on the premises in which it is installed, or maintenance of installed security equipment by a person who removes it from the premises for the work and later reinstalls it, is a construction contract. As a construction contract, the work is a nontaxable service to real estate, and the person performing the service may not charge tax to [**his customer upon the contract price**] the purchaser. Rather, the person performing the service is responsible for the payment of tax upon the purchase price of any part or other tangible personal property [**which is**] transferred to the customer in the course of performing the service.

[(2)](ii) [**Maintenance**] **Repair** of security equipment [**which**] that is the subject of a straight sale because it does not require installation as defined in subsection (b), or maintenance of installed security equipment [**which**] that is removed by the owner or a designee and taken to the service premises, is a taxable service to tangible personal property. The person rendering the service shall register with the Department and collect tax upon both the labor charge and the charge for any part or other tangible personal property which is transferred to the customer in the course of the service. The resale exemption from tax is available to the serviceman upon the purchase of property which is to be transferred.

(2) **Maintenance.**

(i) **Maintenance of installed security equipment on the premises in which it is installed, or maintenance of installed security equipment by a person who removes it from the premises for the work and later reinstalls it, is a building cleaning and maintenance service. As a building cleaning and maintenance service, the charges are subject to tax. The person performing the service is entitled to claim the resale exemption upon the purchase of any tangible personal property or services transferred to the purchaser in connection with the performance of the building cleaning and maintenance service.**

(ii) **Maintenance of security equipment which is the subject of a straight sale because it does not require installation as defined in subsection (b), or maintenance of installed security equipment which is removed by the owner or a designee and taken to the service premises, is a taxable service to tangible personal property. The person rendering the service shall register with the Department and collect tax upon both the labor charge and the charge for any part or other tangible personal property which is transferred to the customer in the course of the service. The resale exemption from tax is available to the serviceman upon the purchase of property which is to be transferred.**

* * * * *

CHAPTER 47. RENTALS

§ 47.18. Totalizator equipment.

(a) **Definitions.** The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

[**Resident**—A natural person, partnership, corporation, association or other entity which is domiciled, maintains a place of business or is authorized to do business in this Commonwealth.]

Totalizator company—A business providing [**electronic totalizator equipment to a corporation**] **computerized pari-mutuel services.**

(b) **Scope.** A totalizator company shall conform with the following:

(1) **Charges to a racing corporation.** A totalizator company which provides [**electronic totalizator equipment**] a computer service to a racing corporation in connection with parimutuel betting is deemed to be rendering a nontaxable service. [**Therefore, charges**] A charge made by the totalizator company to a racing corporation in connection with rendering its nontaxable computer service is exempt from [**sales and use taxes**] **Sales and Use Tax.**

(2) **Purchases by a resident totalizator company.** A totalizator company is considered to be the consumer of equipment, materials or supplies, and services thereto, which it uses in the rendition of its nontaxable computer service. Accordingly, a totalizator company shall pay [**sales or use tax of**] this **Sales and Use Tax to the Commonwealth** in accordance with this subsection:

* * * * *

CHAPTER 58. MISCELLANEOUS

§ 58.13. Carpeting and other floor coverings.

(a) [**General.** This section pertains to the sale and/or installation of carpeting, tile, linoleum and other similar floor coverings. This ruling is intended to amplify the provisions of § 31.16 (relating to contractors acting as agents for their exempt customers).

(b)] **Definitions.** The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

[(c)] (b) **Straight sales.** A straight sale of floor covering is a taxable sale of tangible personal property under the [**sales tax**] **Sales Tax** law. Dealers making [**taxable**] straight sales of floor covering are required to be licensed with the Department and collect and remit [**sales tax**] **Sales Tax** upon the total purchase price, as defined in subsection [(b)] (a), unless the purchaser submits a properly executed exemption certificate or other documentary evidence establishing that the transaction is exempt. See subsection (h). The amount representing the purchase price of a taxable "straight sale" is reported on the taxable sale line of the dealer's regular [**sales tax**] **Sales Tax** return (Form PA-3).

[(d)] (c) **Construction contracts.** A construction contract does not constitute a taxable sale of tangible

personal property. Charges for the sale and installation of floor covering (construction contract) are not subject to tax. The dealer making the construction contract is not exempt from tax. He is considered to be the consumer of property which he uses or transfers in the performance of the "construction contract" and is liable for the payment of the applicable tax. The tax which the dealer is required to pay is based upon his purchase price, as defined in subsection **[(b)] (a)**, of property used, consumed or transferred in the performance of the construction contract. The tax may be paid by utilizing one of two procedures **[set forth at]** in subsection (g). The amount representing a construction contract is reported at the nontaxable sales line of the dealer's regular sales tax return (Form PA-3).

[(e)] (d) *Repairing of floor covering.* Repairing of floor covering shall conform with the following:

* * * * *

(e) Cleaning of floor covering. Persons who provide the service of cleaning floor covering, whether or not the floor covering is removed from the place where it is located, are performing a taxable building cleaning service and are required to collect **[sales tax] Sales Tax** upon the purchase price, unless the purchaser qualifies for exemption under subsection (h).

(f) *Subcontractors' charges for installing floor covering.* A subcontractor's charges for floor covering installation services, as defined in subsection **[(b)] (a)**, are not subject to sales tax as a separately stated item on the customer's invoice, since a subcontract to perform the services falls within the definition of a "construction contract."

* * * * *

(h) *Exemptions.* Exemptions shall conform with the following:

* * * * *

(2) *Straight sales.* Straight sales shall conform with the following:

* * * * *

(ii) A dealer shall be required to collect the applicable **[sales tax] Sales Tax** upon the straight sale of floor covering and related materials to the following organizations or institutions where the floor covering and related materials are of the type which require installation as that term is defined in subsection **[(b)] (a)**.

* * * * *

[Pa.B. Doc. No. 98-123. Filed for public inspection January 23, 1998, 9:00 a.m.]

**[61 PA. CODE CH. 155]
Single Factor Apportionment**

The Department of Revenue (Department), under the authority contained in section 408 of the Tax Reform Code of 1971 (TRC) (72 P.S. § 7408), proposes amendments to § 155.10 (relating to single factor apportionment) to read as set forth in Annex A.

Purpose of the Proposed Amendment

It has long been the public policy of the Commonwealth to improve higher educational opportunities by assisting persons in meeting the educational expenses of higher education and by enabling the Pennsylvania Higher Education Assistance Agency, other lenders and postsecondary institutions to make loans available to students and the parents of students for postsecondary educational purposes. Financial assistance to students is provided through various Federal, State and private postsecondary student loan programs.

The business trust form is frequently used as a financing vehicle to increase the availability of financing for student loans. In these trust structures, a trust is established to acquire student loan notes from originators of student loans. The trust certificates of beneficial interest and debt securities issued by these trusts to raise funds to acquire student loans from originators are secured by the student loan notes acquired, related Federal and State guarantees and subsidies of the student loans, and certain other related assets commonly held by student loan trusts to facilitate the ownership, maintenance and management of, and investment in or purchase and sale of, student loans. Legal title to the student loan notes is typically held by a financial institution serving as trustee and qualifying to hold title to the loans under applicable student loan laws and regulations. The investment in student loans through these trust structures serves the public purpose of increasing liquidity in the student loan market and increasing the total funding available to make student loans.

The act of May 7, 1997 (P.L. __, No. 7) (Act 7) amended section 601 of the TRC (72 P.S. § 7601) so as to change the definitions of "domestic entity" and "foreign entity" with the effect of subjecting business trusts to the Capital Stock Tax/Foreign Franchise Tax, effective for tax years beginning on or after January 1, 1998.

Explanation of Regulatory Requirements

Currently, certain assets exempt from taxation by reason of public policy are listed in § 155.10(d)(4). Student loan assets have not previously been listed as exempt assets because prior to Act 7 trusts holding these assets were not included within the definition of "domestic entity" or "foreign entity" for purposes of the Capital Stock Tax/Foreign Franchise Tax since these trusts are not taxable as corporations for Federal income tax purposes. Treating student loan assets commonly held by these trusts to facilitate the securitization of student loans as taxable assets would contravene public policy in favor of promoting higher education and financial assistance to students pursuing higher education.

Therefore, it is the policy of the Department that for tax years beginning on or after January 1, 1998, student loan assets in § 155.10(d)(4)(vi) that are owned or held by a trust or other entity created or formed for the securitization of student loans, or by a trustee on its behalf, are exempt by reason of public policy from taxation for purposes of the taxable assets fraction under § 155.10.

Fiscal Impact

The Department has determined that the proposed amendment will have a negligible fiscal impact on the Commonwealth.

Paperwork

The proposed amendment will not generate additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The proposed amendment will become effective upon final publication in the *Pennsylvania Bulletin*. The regulation will be scheduled for review within 5 years of final publication. No sunset date has been assigned.

Contact Person

Interested persons are invited to submit in writing any comments, suggestions or objections regarding the proposal to Anita M. Doucette, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061, within 30 days of the date of the publication of this notice in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 13, 1998, the Department submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Committees on Finance. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendment, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the amendment, by the Department, the General Assembly and the Governor.

ROBERT A. JUDGE, Sr.,
Secretary

Fiscal Note: 15-397. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE VI. CORPORATION TAXES

CHAPTER 155. CAPITAL STOCK TAX AND FOREIGN FRANCHISE TAX

§ 155.10. Single factor apportionment.

* * * * *

(d) *Exempt and taxable assets.* The following assets are exempt or taxable, as specified, for purposes of the taxable assets fraction. This listing is not exclusive.

* * * * *

(4) Certain assets are exempt by reason of public policy. These include:

* * * * *

(vi) Student loan assets that are owned or held by a trust or other entity created for the securitization of student loans, or by a trustee on its behalf, including:

(A) Student loan notes.

(B) Federal, State or private subsidies or guarantees of student loans.

(C) Instruments that represent a guarantee of debt, certificates or other securities issued by an entity created for the securitization of student loans, or by a trustee on its behalf.

(D) Contract rights to acquire or dispose of student loans and interest rate swap agreements related to student loans.

(E) Interests in or debt obligations of other student loan securitization trusts or entities.

(F) Cash or cash equivalents representing reserve funds or payments on or with respect to student loan notes, the securities issued by an entity created for the securitization of student loans, or the other student loan assets exempted in this subsection. Solely for purposes of this public policy exemption for student loan assets, "cash or cash equivalents" include:

(I) Direct obligations of the United States Department of the Treasury.

(II) Obligations of Federal agencies which represent the full faith and credit of the United States of America.

(III) Investment grade debt obligations or commercial paper.

(IV) Deposit accounts.

(V) Federal funds and banker's acceptances.

(VI) Prefunded municipal obligations.

(VI) Money market instruments and money market funds.

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[Pa.B. Doc. No. 98-124. Filed for public inspection January 23, 1998, 9:00 a.m.]